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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,896	12/12/2000	Carlos Pinzon	05725.0806-00	5467

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EXAMINER
NUTTER, NATHAN M

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/733,896	PINZON ET AL.	
	Examiner	Art Unit	
	Nathan M. Nutter	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *318-336* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *318-336* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *0504*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This application has been re-assigned to Examiner Nathan M. Nutter in Art Unit 1711. All inquiries regarding this application should be directed to Examiner Nutter at telephone number 571-272-1076.

Response to Amendment

In view of the Amendment filed 19 April 2005, the following is placed in effect:

The pending claims are 318-336.

The rejection of claims 1-27, 40-46, 50-63, 66, 69-111, 131-138, 142-155, 187-213, 226-281, 286 and 289-299 under 35 U.S.C. 103(a) as being unpatentable over Ross et al (US 5,500,209) in view of Arnaud et al (US 5,908,63), is hereby expressly withdrawn.

The rejection of claims 28-39, 112-130 and 214-225 under 35 U.S.C, 103(a) as being unpatentable over Ross et al (US 5,500,209) in view of Arnaud et al (US 5,908,631), and further in view of Pavlin et al (US 5,783,657), is hereby expressly withdrawn.

The rejection of claims 64-65, 67-68 and 156-186 under 35 U.S.C. 103(a) as being unpatentable over Ross et al (US 5,500,209) in view of Arnaud et al (US

5,908,631) and further in view of Mondet (US 6,180,123), is hereby expressly withdrawn.

The rejection of claims 47-49 and 139-141 under 35 U.S.C. 1O3(a) as being unpatentable over Ross et al (US 5,500,209) in view of Arnaud et al (US 5,908,631) and further in view of Ferrari (US 6,402,408), is hereby expressly withdrawn.

The rejection of claim 288 under 35 U.S.C. 103(a) as being unpatentable over Tourmilhac et al (US 6,287,552) in view of Arnaud et al (US 5,908,631), is hereby expressly withdrawn.

The following new rejections are being applied herewith.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 335 and 336 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The compositions of "ethylenediamine/stearyl dimmer tallate copolymer" recited in claim 335 and "ethylenediamine/stearyl dimmer dilinoleate copolymer" recited in claim 336 and critical or essential to the practice of the

invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

The Specification does not teach the specific monomers included to produce either copolymer. Nothing is disclosed to show the tallate or dilinoleate esters.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 318-336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-102 of copending Application No. 09/733,897. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claims 27-29, in particular. The composition must be produced before it is employed in a utility, as recited.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 336-367 of copending Application No. 09/733,898. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claims 337, 338, 341, 347, in particular.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-126 of copending Application No. 10/129,377. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claim 28, for the polyamide, claim 84, for the inclusion of gums, which broadly embraces alkylated guar, as recited in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-38 and 41-44

of copending Application No. 10/198,931. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claims 1, 37 and 43-48, for the polyamides recited in claims 319, 335 and 336 and for the inclusion of polysaccharide resins, which broadly embraces alkylated guar and alkyl celluloses, as recited in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-334 and 336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-124 of copending Application No. 10/203,254. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claims 28-37 and 57-70, for the polyamides recited in claims 319 and 336 and claims 88, 89 and 99 for the inclusion of polysaccharide resins, which broadly embraces alkylated guar and alkyl celluloses, as recited in the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-334 and 336 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-124

of copending Application No. 10/203,254. Although the conflicting claims are not identical, they are not patentably distinct from each other because the constituents, as recited and claimed herein, may be included in the compositions recited in the claims. Note claims 300, 320 and 321, for the polyamides recited in claims 319 and 336 and claims 303 and 312 for the inclusion of the recited and claimed "alkylated guar gums and alkyl celluloses."

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 318-325, 328-332 and 334 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,761,881, newly cited to Bara. Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of the cosmetic claimed embraces the components recited and claimed herein.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 318-334 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feng et al (USPN 6,716,420), newly cited, Ferrari (USPN 6,402,408), Ross et al (USPN 5,500,209) or Pavlin et al (USPN 5,783,657), all previously cited, taken with Palinczar

(USPN 4,699,779), newly cited, Mondet (USPN 6,180,123) or Arnaud et al (USPN 5,961,998), both previously cited.

The references to Feng et al (USPN 6,716,420), Ferrari (USPN 6,402,408), Ross et al (USPN 5,500,209) and Pavlin et al (USPN 5,783,657) all teach the conventionality of producing a composition comprising a liquid fatty phase which comprises a polyamide polymer and an oil phase as herein claimed.

Note in Feng et al (USPN 6,716,420), at column 3 (lines 1-6), column 11 (lines 40 et seq) and column 12 (line 17) to column 13 (line 51) which teach the identical components for the liquid fatty phase as recited in claims 320-326 and 332-334. Note column 4 (lines 16-38) and column 7 (lines 10-51) for the polyamides employed, including that recited in claim 319. The reference teaches the inclusion of liposoluble polymers at column 17 (lines 46-60) and film-formers at the paragraph bridging column 15 to column 16.

The reference to Ferrari (USPN 6,402,408) teaches the identical components for the liquid fatty phase as recited in claims 320-326 and 330-334 at column 6 (lines 10) to column 7 (line 23). Note column 3 (lines 37 et seq) for the polyamides employed, including that recited in claim 319. Note column 7 (lines 11-23) for the addition of thickening agents and liposoluble polymers.

The reference to Ross et al (USPN 5,500,209) teaches the identical components for the liquid fatty phase as recited in claims 320-326 and 330-334 at column 15 (lines 48-55) and column 16 (lines 23-54). Note column 6 (lines 15-33 and 52-63), the paragraph bridging column 7 to column 8 and column 14 (lines 46-63) for the

polyamides employed. Note column 9 (lines 15-18) for the use of thickening agents and column 11 (lines 11-38) for the polysaccharides and derivatives thereof.

The reference to Pavlin et al (USPN 5,783,657 teaches the identical components for the liquid fatty phase as recited in claims 320-326 and 330-334 at column 15 (lines 48-55) and column 16 (lines 23-54). Note column 3 (lines 31-47), column 3 (line 56) to column 4 (line 48) and column 14 (lines 46-63) for the polyamides employed, including that recited in claim 319. The reference teaches the addition of other constituents at column 14 (lines 28-67) and column 17 (lines 24-33)

The references to Palinczar (USPN 4,699,779), Mondet (USPN 6,180,123) and Arnaud et al (USPN 5,961,998), all teach the conventionality of using alkylated cellulose and gums as suitable thickening agents for compositions that may comprise an oily phase, as herein claimed. These derivatives are notoriously known in the art as thickening agents and coating agents and are liposoluble polymers. Note in Palinczar (USPN 4,699,779) at column 6 (lines 6-45), column 10 (lines 33-55) and the paragraph bridging column 10 to column 11. The reference to Mondet (USPN 6,180,123) shows the use of alkylated guar at column 12 (lines 13-20) for use in an oil phase identical to that included herein. Note column 7 (line 55) to column 8 (line 59) for an oil phase identical to that recite in instant claims 320-326 and 330-334. The patent to Arnaud et al (USPN 5,961,998) shows the use of alkyl ethers of guar at column 2 (lines 52 et seq) for use in an oil phase, as recited and herein claimed. Note column 5 (line 26) to column 6 (line 13) for the composition as recited in claims 322, 323, 325 and 327-334.

The primary references teach the essential constituents of a polyamide resin with an oil phase. The subsequent employment of the polysaccharides of either secondary reference in the compositions as set out by the primary references would be prima facie obvious to an artisan of ordinary skill. The constituents all appear to be conventional and known. No unexpected results have been shown on the record with regard to the inclusion of either constituent.

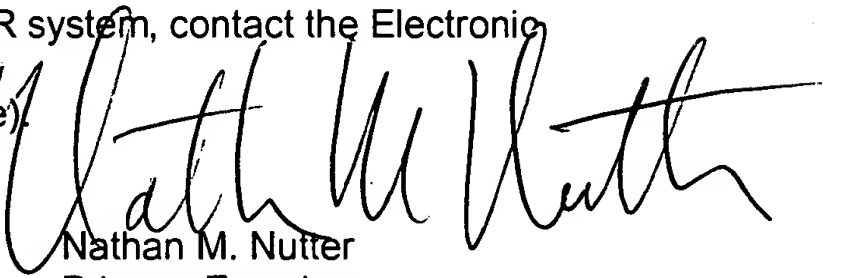
Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

11 July 2005